

BEFORE THE PATENT TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRIAL NOS.: IPR 2013-00082 through 2013-00087

PATENT NOS: 5,978,791; 6,415,280; 7,945,544;
7,945,539; 7,949,662; 8,001,096

PATENT OWNERS: PERSONALWEB TECHNOLOGIES, LLC
& LEVEL 3 COMMUNICATIONS

PETITIONER: EMC CORPORATION & VMWARE, INC.

INVENTOR: DAVID A. FARBER and RONALD D. LACHMAN

DEPOSITION OF JASON SCOTT SADOFSKY

Friday, June 28, 2013

New York, New York

9:03 a.m.

REPORTED BY: Josephine H. Fassett, RPR, CCR, CLR

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3 T R A N S C R I P T of the Deposition of
4 JASON S. SADOFSKY taken by Patent Owner, PersonalWeb
5 Technologies, LLC, pursuant to Notice, at the
6 offices of WilmerHale, 7 World Trade Center, 250
7 Greenwich Street, New York, New York, on Friday the
8 28th day of June 2013, at 9:03 a.m., before
9 Josephine H. Fassett, a Registered Professional
10 Reporter, Certified Shorthand Reporter, Certified
11 Livenote Reporter, and Notary Public within and for
12 the State of New York.

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1 A P P E A R A N C E S:

2

3 NIXON & VANDERHYE, P.C.

4 Attorneys for Patent Owner, PersonalWeb

5 Technologies, LLC

6 901 N. Glebe Road

7 11th Floor

8 Arlington, Virginia 22203

9 BY: JOSEPH A. RHOA, ESQ.

10 TODD M. THOMPSON, ESQ.

11

12 WILMERHALE

13 Attorneys for Petitioner, EMC Corporation and

14 VMware, Inc.

15 950 Page Mill Road

16 Palo Alto, California 94304

17 BY: ROBERT M. GALVIN, ESQ.

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1 I N D E X

2	WITNESS	PAGE
3	JASON SCOTT SADOFSKY	
4	By Mr. Rhoa	7,67
5	By Mr. Galvin	56

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8

9 E X H I B I T S

10	PERSONALWEB	DESCRIPTION	PAGE
11		(none)	

12

13

14

15 EXHIBITS PREVIOUSLY MARKED AND REFERENCED

16 1004, 1047, 1048, 1049, 1078

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1 PRODUCTION OF DOCUMENTS AND/OR INFORMATION

2 Page Line

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6 DIRECTION TO WITNESS NOT TO ANSWER

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11 QUESTIONS MARKED FOR LATER RULING

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STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and
between the attorneys for the respective parties
herein that filing and sealing be and the same are
hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all
objections, except as to the form of the question,
shall be reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the
within deposition may be signed and sworn to before
any officer authorized to administer an oath with
the same force and effect as if signed and sworn to
before the Court.

1 (Whereupon, on the record 9:03 a.m.)

2 J A S O N S C O T T S A D O F S K Y,

3 the witness, having been duly sworn, was

4 examined and testified under oath as follows:

5 EXAMINATION BY

6 MR. RHOA:

7 Q Please state your name for the record.

8 A My name is Jason Scott Sadofsky. My
9 professional name is Jason Scott.

10 Q What do you mean by "professional name"?

11 A I found very early in my life that people
12 could not spell Sadofsky correctly, so I would
13 sometimes use my middle name. So sometimes
14 there's -- when I give speeches or if I'm speaking
15 to people about history, I sometimes just use Jason
16 Scott as an easy way to reach me.

17 Q Do you use any other names?

18 A No, those are my two.

19 Q What's your birth date?

20 A I was born on September 13, 1970.

21 Q Are you currently employed?

22 A I am currently employed.

1 Q By whom?

2 A I'm employed by the Internet Archive.

3 Q How long have you been employed by the
4 Internet Archive?

5 A I have been employed by the Archive since
6 May of 2011.

7 Q Where were you employed before that?

8 A Before that, I was employed as an
9 administrator at a company called Savvis, which is
10 spelled S-a-v-v-i-s.

11 Q Can you describe your education for us?

12 A Sure. High school graduate, who then went
13 on to a degree in mass communications, concentration
14 in film, at Emerson College in Boston.

15 Q Is that a two-year degree, four-year
16 degree, what kind of degree?

17 A I'm sorry. Four-year degree.

18 Q Ever take any law classes?

19 A No, I have not.

20 Q You're not a lawyer, are you?

21 A I am not a lawyer.

22 Q Are you represented by counsel for today's

1 deposition?

2 **A I'm -- I have no legal representation.**

3 Q Do you know who the gentleman is sitting
4 next to you?

5 **A Yes.**

6 MR. RHOA: Do you want to introduce
7 yourself, Rob?

8 MR. GALVIN: Rob Galvin on behalf of the
9 Petitioner, EMC and VMware.

10 BY MR. RHOA:

11 Q Is Mr. Galvin representing you in today's
12 deposition?

13 **A No.**

14 Q So you are not represented by counsel
15 today?

16 **A I -- I have no legal representation.**

17 Q Did someone from Mr. Galvin's firm contact
18 you with respect to this matter?

19 **A Yes, they did.**

20 Q When was the first contact?

21 **A I'm not sure of the exact date, but it was**
22 **within about a month of this date today.**

1 Q Sometime in May or June of 2013?

2 A Yes.

3 Q Who was the person who first contacted
4 you?

5 A His name was Joshua, I believe. It had
6 been a while since I -- we knew each other a while
7 ago and I remembered his face but not his name. And
8 I -- he called me within the month.

9 Q How did you know each other a while ago?

10 A I had spoken about computer history at a
11 conference in Detroit in 2000 and 1999 and he had
12 attended that conference.

13 Q What did he tell you that he wanted when
14 he contacted you?

15 A I'm not sure of the exact words, but he
16 explained to me that there was a software patent
17 case that his firm was looking at. And that he
18 believed I might have information regarding a
19 shareware CD-ROM that I hosted. And that he had
20 discovered in conversations that the source that the
21 law firm was using was my Web site. And so since he
22 had seen me speak about it, and we knew of each

1 other through that, that he could make a phone call
2 and find me.

3 Q Have you communicated with any other
4 lawyers from the WilmerHale firm?

5 A I've spoken with a lawyer, whose name I
6 believe is Corey. And there is another lawyer, a
7 woman, whose name I do not have in front of me, who
8 was on one conference call with me.

9 Q How many times have you spoken to Corey?

10 A Stepping back I spoke -- the first time I
11 spoke at -- with any lawyers from this firm, I spoke
12 with my old acquaintance who then asked me to be on
13 a conference call, which I was on two days later,
14 which I believe Corey was on. Followed by another
15 conversation when we were trying to schedule the
16 deposition and trying to determine where would be
17 easiest for me and for the other attendees.

18 Q How many total telephone discussions did
19 you have with WilmerHale attorneys regarding this
20 matter?

21 A I believe it has been three times.

22 Q How many e-mails have you sent or received

1 from WilmerHale attorneys regarding this matter?

2 **A Including scheduling this deposition and**
3 **finding an ideal time, I believe around five.**

4 Q Do you have an engagement agreement with
5 the WilmerHale firm regarding this matter?

6 **A If you could explain to me what that**
7 **means.**

8 Q Do you have any type of contract or
9 written agreement with the WilmerHale firm in any
10 respect?

11 **A I -- I certainly signed the testimony**
12 **papers that I attested to, but other than that,**
13 **which I don't know if that counts as an agreement.**

14 Q Has the WilmerHale firm paid you any money
15 regarding this matter?

16 **A Absolutely not.**

17 Q Is there any agreement that sets forth any
18 hourly rate or anything like that?

19 **A Nothing.**

20 Q So you, as far as you know, you do not
21 have a written contract with the WilmerHale firm,
22 regarding consulting?

1 **A** **I don't have a consulting contract with**
2 **them.**

3 **Q** What did you do to prepare for today's
4 deposition?

5 **A** **I have, besides a meeting in which we**
6 **verified the information that they were seeking from**
7 **my archives, I've acquainted myself with the history**
8 **of the shareware CD, the BBSS that are mentioned in**
9 **the documentation, and just general Bulletin Board**
10 **System history.**

11 **Q** Did you meet with anyone yesterday
12 regarding this deposition?

13 **A** **I met with nobody yesterday.**

14 **Q** Did you meet with any attorneys from the
15 WilmerHale firm for preparing for this deposition?

16 **A** **I met with an attorney two days ago.**

17 **Q** Who?

18 **A** **The lawyer to my left.**

19 **Q** Mr. Galvin?

20 **A** **Yes.**

21 **Q** What did he tell you during that meeting?

22 **A** **He explained to me what this meeting would**

1 likely consist of, that it would probably take
2 hours. And he asked me questions about my
3 deposition regarding, you know, details or if I had
4 any responses to questions that he asked me.

5 Q What questions did he ask you?

6 A His questions centered around details in
7 the deposition.

8 Q Do you recall any questions that he asked
9 you during that meeting?

10 A I don't recall many specific questions. A
11 lot of the meeting was reminiscence about Bulletin
12 Board System history and various pieces of knowledge
13 that I have about the history of bulletin boards.

14 Q So you don't recall any question that he
15 asked you during that meeting?

16 A Unfortunately I don't. If I think about
17 it, I can say that he mostly asked me questions
18 about Walnut Creek and the company and one -- why
19 the archive is called Simtel versus Simtel-20 and
20 what that meant.

21 Q Did he tell you anything about any lawsuit
22 during that meeting?

1 A He told me this was for the lawsuit that I
2 was testifying in.

3 Q Did he tell you anything else about the
4 lawsuit?

5 A No, he hasn't. He hasn't discussed any
6 part of it with me, and I haven't been interested in
7 it.

8 Q How long was that meeting?

9 A Roughly four hours.

10 Q Were any other WilmerHale attorneys
11 present in that meeting?

12 A There were two lawyers on conference call,
13 I believe.

14 Q Do you know who they were?

15 A There was a woman, whose name I can't
16 recall. I believe -- I believe it's Corey was also
17 on the call.

18 Q During that meeting, did any WilmerHale
19 attorney tell you what they wanted you to say during
20 today's deposition?

21 A The impression I got after the meeting was
22 that they wanted me to focus on the details of the

1 **case and not tell unrelated stories and trivia about**
2 **Bulletin Board System history, as I am known to do**
3 **in my speeches.**

4 Q Did the WilmerHale firm offer to pay you
5 with respect to this matter?

6 A During one conversation a lawyer said that
7 if it, if it occurred to me that I was spending a
8 lot of time and effort on this process, that
9 compensation should be discussed.

10 Q Did any WilmerHale attorney tell you that
11 they were paying other witnesses?

12 A Nobody indicated to me that there were any
13 other witnesses.

14 Q If they offered you money, would you have
15 taken it for this matter?

16 A No.

17 Q Why not?

18 A I was very interested in the process of
19 testifying or providing a deposition in a
20 software-related case and I wasn't interested in
21 being paid for it.

22 Q Do you have any experience in any --

1 withdraw that. Let me rephrase the question.

2 Do you have any personal experiences with
3 any intellectual property matters?

4 A Could you define "personal experience"?

5 Q During the course of your life, have you
6 ever been involved in any disputes regarding
7 intellectual property, not including what we're here
8 to discuss today?

9 A In one case I worked for a company who had
10 a lawsuit occur that I heard about regarding one of
11 the products they sold and that they had another
12 firm telling them that they owned the rights to that
13 technology, and I watched an occasional message that
14 that process was ongoing from the main office. I
15 eventually heard that we lost that case and paid a
16 licensing fee.

17 Q Was that a patent case?

18 A I believe so. Unfortunately that's -- it
19 sounds very general because that's the only recall I
20 have about it. It was one of those situations where
21 it was in the company mailing once every couple of
22 months that there was something going on.

1 Q What company was that?

2 A Digital Island.

3 Q You were employed by Digital Island?

4 A I was employed by Digital Island, which
5 had purchased a previous company division that I
6 worked for.

7 Q When were you employed by Digital Island?

8 A I was employed by Digital Island roughly
9 from 2000 to 2002. And Digital Island sold my
10 division to a company called Cable & Wireless. And
11 Cable & Wireless was later sold to a company called
12 Savvis.

13 Q How do you spell that?

14 A S-a-v-v-i-s.

15 During that time I was in the same
16 position in the same desk with the same
17 responsibilities.

18 Q What was the name of the company before
19 Digital Island acquired it?

20 A I believe the last name was Thomson,
21 T-h-o-m-s-o-n, Technical Group.

22 Q When you were at Digital Island, do you

1 recall who your supervisor was, if you had one?

2 A Did I have a direct supervisor?

3 There was a manager that I worked for and
4 his name was Marc Lippman, M-a-r-c L-i-p-p-m-a-n.

5 Q Where was your office?

6 A My office was in Medford, Massachusetts.

7 Q So at Thomson, Digital Island, Cable &
8 Wireless, and Savvis, your office was always in
9 Medford, Massachusetts?

10 A Around the end of 2002 or the beginning of
11 2003 we were moved to another office in Waltham,
12 Massachusetts.

13 Q What were your job duties?

14 A I was -- my title was system
15 administrator. And I was primarily in charge of
16 between five and twenty customers who had servers
17 hosted with us. And I built machines, ran operating
18 systems, upgraded machines, took phone calls with
19 clients, was sometimes asked to research possible
20 improvements to the various systems, and generally
21 assist customers with their technical issues with
22 the hosted machines.

1 Q Are there any other intellectual property
2 disputes you were ever involved with?

3 A I don't recall any. I certainly never
4 testified in a case or was contacted by a lawyer
5 regarding these issues.

6 Q Any copyright disputes you've ever been
7 involved with?

8 A I host a variety of historical items from
9 various Bulletin Board Systems and information
10 sources and on occasion I have been contacted and
11 asked to remove them from my Web site, which I
12 comply with.

13 Q Who has contacted you and asked you to do
14 that?

15 A It has ranged. Occasionally it has been
16 an individual who wrote something 10 or 20 years
17 previously who has discovered that it made its way
18 to my collection. And in one case, that I can
19 recall, a church wrote a document about some
20 religious subject. And that writing of theirs had
21 traveled around and I had a copy of it. And they
22 said that they had actually written it and requested

1 **I take it down.**

2 Q I would like to hand you a document
3 identified as Exhibit EMC 1078 in IPR 2013-00087.

4 What is Exhibit 1078?

5 A **This appears to be my declaration signed**
6 **with my signature.**

7 Q Your signature is on page 9?

8 A **Yes, it is.**

9 Q Did you sign this?

10 A **Yes, I did. I signed a copy that I**
11 **printed out, scanned it, and then returned it.**

12 Q When did you sign it? The date. What
13 date did you sign it?

14 A **I signed it on June 12.**

15 Q You used the phrase "personal knowledge"
16 in your declaration, correct?

17 A **Yes.**

18 Q What's your understanding of what personal
19 knowledge means?

20 A **I interpret personal knowledge to be**
21 **information based on my expertise and research**
22 **involving computer history and collection of --**

1 collections of files that I have gathered in the
2 process of the last 20 or 30 years.

3 Q Anything else?

4 A I'm not sure what else I would consider to
5 be personal knowledge beyond what I experienced and
6 researched.

7 Q If you received a letter in the mail from
8 someone named Paul at the bottom, and the letter
9 said, "My name is Paul, I sent you this letter," but
10 you never personally saw the letter being sent or
11 written, in that situation, would you have personal
12 knowledge regarding who sent you that letter?

13 MR. GALVIN: Objection to form.

14 Q Based on your understanding of personal
15 knowledge.

16 A I would definitely say that I received a
17 letter from someone named Paul. And I would file
18 away what I was sent. But I would consider it to be
19 another artifact to ask additional questions about,
20 especially if it was a sole source or a sole example
21 of some information. So I would say that I wouldn't
22 know anything about Paul and I wouldn't know if Paul

1 **specifically wrote what I received, but I would file**
2 **away that I received a letter from Paul.**

3 Q So you would not have personal knowledge
4 regarding who sent you that letter, correct?

5 A **Correct.**

6 MR. GALVIN: Objection.

7 Q Are you a sports fan at all?

8 A **I -- I think by most standards I wouldn't**
9 **be called a sports fan.**

10 Q If you read in the newspaper that someone
11 swam across the Hudson River yesterday, but you did
12 not personally observe them swimming across the
13 river, would you or would you not have personal
14 knowledge regarding whether that person swam across
15 the Hudson River?

16 MR. GALVIN: Objection to form.

17 A **I would say that I had personal knowledge**
18 **that it was reported that that person swam across**
19 **the Hudson River, but I was not at the Hudson River**
20 **when it happened.**

21 Q You did not personally observe anyone swim
22 across the river?

1 **A I did not personally observe that.**

2 **Q Who prepared the first draft of your**
3 **declaration?**

4 **A I don't know who specifically prepared it,**
5 **I was given to it by the same lawyers that I**
6 **discussed the material with.**

7 **Q Someone at WilmerHale prepared it?**

8 **A Yes.**

9 **Q Did you make any changes?**

10 **A During our discussions, I indicated which**
11 **year that I thought I started the subsite, the**
12 **secondary site listed in it, cd.textfiles.com, and I**
13 **went back and looked at my files and realized I was**
14 **off by two years, so I asked them to change that.**
15 **This was before I signed anything.**

16 **Q How many different drafts of your**
17 **declaration did you go through with the WilmerHale**
18 **lawyers before it was finalized and signed?**

19 **A One change, the year of the subsite.**

20 **Q Did they e-mail you the draft?**

21 **A Yes.**

22 **Q Do you have an understanding of the**

1 difference between personal knowledge and belief?

2 MR. GALVIN: Objection to the form.

3 A Do you want me to define them or are you
4 just asking if I am aware there's a difference
5 between those two?

6 Q In your declaration, in Paragraph 2, it
7 refers to personal knowledge. Do you see that?

8 A Yes.

9 Q Then in Paragraph 21 it refers to
10 statements made on information and belief. Do you
11 see that?

12 A Yes.

13 Q What is the difference between personal
14 knowledge and information and belief in your view?

15 A In this particular case, I interpret
16 personal knowledge to be my observations, historical
17 knowledge, and artifacts and items that are in my
18 possession, and that belief constitutes my belief
19 that what I experienced or know is true.

20 MR. RHOA: Why don't we take a break.

21 THE WITNESS: Okay.

22 (Whereupon, off the record.)

1 (Whereupon, resumed.)

2 BY MR. RHOA:

3 Q How did your employment with Thomson,
4 Digital Island, Cable & Wireless, and Savvis
5 terminate?

6 A When I worked for these companies, which I
7 think of as the same company with different names,
8 but they are, in fact, separate companies. I was
9 employed as a system administrator for a smaller
10 number of clients, as I said, and over the years
11 these clients would transfer to other companies or
12 decide to host their machines elsewhere. And
13 ultimately there was one major customer who was at
14 the beginning of my employment with them or with the
15 companies a major contributor to the bottom line.
16 They had a large amount of machines, and they had a
17 large amount of presence, and they had made it clear
18 in meetings that I and my colleagues were a critical
19 part of them staying with that company. And over
20 the years, their parent company started moving their
21 machines to other hosted facilities. And when they
22 finally, completely moved out a few months later,

1 **they -- my company said that they were no longer in**
2 **need of my services.**

3 Q What was the name of that major customer?

4 A **Gale.**

5 Q How do you spell that?

6 A **G-a-l-e.**

7 Q What year was that?

8 A **2009.**

9 Q I'd like to hand you a document identified
10 as Exhibit EMC 1047 in IPR 2013-00087.

11 Do you have Exhibit 1047 in front of you?

12 A **I do.**

13 Q When was the first time you saw this
14 document?

15 A **This document was first seen by me when it**
16 **was sent by the lawyers as part of a package of**
17 **documents to sign, including my declaration and**
18 **these items.**

19 Q Did they send it to you via e-mail?

20 A **Yes, they did.**

21 Q And so you first saw this sometime in the
22 last two months?

1 **A Yes.**

2 **Q Did you author this document?**

3 **A I did not.**

4 **Q Do you have any personal knowledge**
5 **regarding who authored this document?**

6 **A I do not.**

7 **Q Why not?**

8 **A Well, as we discussed, I did not**
9 **personally witness this document being written for**
10 **Computer Shopper magazine.**

11 **Q Do you recall personally ever seeing this**
12 **document before April 11, 1995?**

13 **A I do not.**

14 **Q Do you have personal knowledge regarding**
15 **how this document was created and who created it?**

16 **A I was mailed this document from the**
17 **lawyers, and other than the printing of the document**
18 **itself, I don't have any personal knowledge of its**
19 **creation.**

20 **Q I would like to hand you a document**
21 **identified as Exhibit EMC 1048 in IPR 2013-00087.**

22 **Do you have Exhibit 1048 in front of you?**

1 **A I do.**

2 **Q When was the first time you saw this?**

3 **A I saw this document at the same time that**
4 **I saw the previous document when it was mailed to me**
5 **as a package of documents from the lawyers.**

6 **Q So you saw this for the first time within**
7 **the last several months?**

8 **A Yes.**

9 **Q Did you author this document?**

10 **A I did not author this document.**

11 **Q Do you have personal knowledge regarding**
12 **who authored this document?**

13 **A Other than that the document was mailed to**
14 **me from the lawyers, I do not.**

15 **Q Do you recall ever personally seeing this**
16 **document before April 11, 1995?**

17 **A I did not.**

18 **Q I would like to hand you a document**
19 **identified as Exhibit EMC 1004.**

20 **Do you have Exhibit EMC 1004 in front of**
21 **you?**

22 **A Yes.**

1 Q Is this what you call the, open quote,
2 Kantor Reference, close quote, in your declaration?

3 A **Yes, it is.**

4 Q When was the first time you saw this
5 Exhibit 1004?

6 A **I saw this as part of a conference call
7 with the lawyers within the last three weeks.**

8 Q So the first time you saw the Kantor
9 Reference was sometime within the last several
10 months?

11 A **Yes.**

12 Q Did you author this document?

13 A **I did not create this document, no.**

14 Q Do you have any personal knowledge
15 regarding who authored this document?

16 A **I have personal knowledge that this
17 document was on a shareware CD-ROM in my possession.
18 And I verified that the document here is the same as
19 the one that I had in my collection. So I'm aware
20 that Walnut Creek CDRom published this document in a
21 CD-ROM from October 1993.**

22 MR. RHOA: More to strike that answer as

1 nonresponsive.

2 BY MR. RHOA:

3 Q Did you personally observe anyone ever
4 creating this document? Let me withdraw that and
5 rephrase that.

6 Did you ever personally observe anyone
7 authoring this document?

8 A I've not seen any -- I have not personally
9 observed anyone writing this document.

10 Q Do you recall personally seeing this
11 document before April 11, 1995?

12 A No.

13 Q On the front of this document it says
14 Version 1.22. Do you see that?

15 A Yes, I do.

16 Q What does Version 1.22 mean to you?

17 A Version 1.22 means that there were
18 previous versions of this program and that over
19 time, as various changes or improvements were made
20 to the program, the version number would increment
21 so that others could know which version of the
22 program they had.

1 Q Have you reviewed any other versions of
2 this FWKCS?

3 A **I have not.**

4 Q Do you know whether any other version
5 includes this document at Exhibit EMC 1004?

6 A **This exact document?**

7 Q Yes.

8 A **I have not looked at previous versions or**
9 **other versions of this program, so I am not aware of**
10 **what sort of documents they have.**

11 Q Okay. Do you have any personal knowledge
12 regarding how many other versions there are of this
13 program?

14 A **I do not.**

15 Q So you've never reviewed any version of
16 FWKCS other than Version 1.22; is that correct?

17 A **Yes.**

18 Q I'd like to give you a document identified
19 as Exhibit EMC 1049 in IPR 2013-00087.

20 Do you have Exhibit 1049 in front of you?

21 A **I do.**

22 Q Is this a picture of a disc?

1 A This is a scanned image of a CD-ROM and
2 the included label and paper insert of a shareware
3 CD-ROM.

4 Q Were you ever employed by Simtel,
5 S-i-m-t-e-l?

6 A I was never employed by Simtel.

7 Q Were you ever employed by the U.S. Army?

8 A I was never employed by the U.S. Army.

9 Q Were you ever employed by Walnut Creek?

10 A I was never employed by Walnut Creek.

11 Q Did you ever visit Simtel?

12 A Simtel is a server. In the term "visit"
13 to be browse or connect to via the Internet.

14 Q Did you ever personally, physically visit
15 the Simtel archive?

16 MR. GALVIN: Objection to form.

17 Q In person.

18 MR. GALVIN: Same objection.

19 A If the term is meant to be, did I ever
20 stand in front of the machine and witness the
21 machine, no. If the term is to say, did I
22 personally connect to the Simtel machine via the

1 Internet to look at or browse the files on it, yes.

2 Q Did you ever personally visit Walnut
3 Creek?

4 A No. I never visited Walnut Creek if the
5 term means to visit the office of Walnut Creek. If
6 the term is to say I visited or connected to servers
7 on the Internet that were owned by Walnut Creek,
8 yes.

9 Q So in Exhibit 1049 is it fair to say this
10 is a disc along with its packaging?

11 A This is a scan of the disc and its
12 included documents.

13 Q When was the first time you saw this
14 particular disc?

15 A The first time I saw this disc in a
16 physical manifestation was 2009.

17 Q Where?

18 A Throughout 2009 and in other years I would
19 purchase anonymously through eBay lots or
20 collections of shareware and commercial CD-ROMs from
21 auctions and I would be mailed those lots. And so
22 in 2009 I made multiple large purchases of shareware

1 **CD-ROMs of which this was one of them.**

2 Q Do you recall from whom you purchased this
3 disc in 2009?

4 A **I do not recall.**

5 Q Do you have any personal knowledge of this
6 disc being manufactured?

7 MR. GALVIN: Objection to the form.

8 A **As a person who has spent 20 years**
9 **purchasing and owning these disks, and as somebody**
10 **who has paid for the manufacture of DVD and CDs,**
11 **observing the form of this disc with its**
12 **manufacturing notes and the style of the plastic, I**
13 **know that this is a commercially made CD-ROM done at**
14 **a pressing plant with markings indicating so, and**
15 **that I would consider this to be a professionally**
16 **manufactured CD-ROM from a professional firm.**

17 Q You mention in your declaration a ZIP
18 file, correct?

19 A **Yes, I do mention a ZIP file.**

20 Q Did the ZIP file that you mention in your
21 declaration come from the disc shown at EMC 1049?

22 A **Yes, it did.**

1 Q And you say you compared something from
2 the ZIP file, which came from the disc, with the
3 Kantor Reference that was given to you by
4 WilmerHale; is that right?

5 A **Yes.**

6 Q In what form did WilmerHale give you the
7 Kantor Reference?

8 A **WilmerHale mailed me a PDF file of the**
9 **Kantor Reference.**

10 Q E-mailed it to you?

11 A **Yes.**

12 Q Any other form?

13 A **No.**

14 Q And what did you compare that with that
15 was in the ZIP file?

16 A **In 2009 I took the contents of the**
17 **shareware CD in my possession and transferred them**
18 **to my web server. And that file has not been**
19 **modified by me in the time since. And when I was**
20 **mailed the PDF I started a Skype call with the**
21 **WilmerHale lawyers to show them my desktop and**
22 **unpacked the ZIP file from my collection and ran the**

1 installer program contained in the ZIP file that
2 unpacks the reference file. I then brought up the
3 file and the PDF file in a text comparison program
4 that I have and studied the two for any differences,
5 wherein the differences I found were page breaks in
6 the PDF file and page break characters in the REF
7 file, the Kantor Reference, and I verified that
8 there were no changes in the letters, numbers or
9 spaces otherwise in the documents making them
10 materially the same.

11 Q Anything else?

12 A Do you mean any other steps that I took?

13 Q Have you finished answering the question?

14 A Yes, I have.

15 Q What text comparison program did you use?

16 A I used a program called Compare It! with
17 an exclamation point. Compare It!.

18 Q Can you spell that, please?

19 A C-o-m-p-a-r-e space I-t exclamation point.

20 Q Did this ZIP file have a name?

21 A The ZIP file that was located in my
22 collection, is that what you're asking?

1 Q Yes. And I assume, my understanding is
2 you're saying that's the ZIP file that came from the
3 disc of Exhibit 1049, right?

4 A Yes.

5 Q Did that ZIP file have a name?

6 A Yes.

7 Q What was that name?

8 A It was FWKCS122.ZIP.

9 Q Did it have a TM as part of the name or
10 not?

11 A File names do not have more than -- file
12 names of an MS-DOS nature have room for eight
13 letters, numbers and special characters, and then a
14 dot and then three letters, numbers or a number of
15 special characters, none of which is a trademark.
16 So there was no trademark name in the file name
17 itself.

18 Q How many files were in the ZIP file?

19 A I do not recall the exact number of files
20 in the ZIP file. I am sure it was less than 10.

21 Q Do you recall the names of the different
22 files in the ZIP file?

1 A I do not recall the exact names.

2 Q Do you recall any names of files that were
3 in the ZIP file?

4 A I simply do not.

5 Q Do you recall what types of files were in
6 the ZIP file?

7 A There was definitely an executable file.
8 There was a text file of some sort. And I recall
9 there being some support files.

10 Q How do you know there was an executable
11 file or files in the ZIP file?

12 A Because I ran an executable file to
13 generate the unpacked .ref file, the Reference, the
14 Kantor Reference.

15 Q Do you know what executable file that was?

16 A I don't know its exact name.

17 Q Could you have reviewed the Kantor
18 Reference without running that executable file?

19 A You would definitely have to, upon
20 unpacking the contents of the ZIP file, run that
21 program to install it, at which point it would
22 provide you with the documentation, the Kantor

1 **Reference.**

2 Q Do you know what program that was?

3 A I don't recall its exact name. The
4 program that it ran was definitely a unique program
5 name. It wasn't a commercial or that's not -- it
6 was not a program that I recognized, it was a
7 program written to unpack the Reference in other
8 program files.

9 Q How many different special programs did
10 you need in order to access and view the Kantor
11 Reference file from that ZIP?

12 A As it is 2013, and the program is from
13 1993, I had to run a DOS emulator, which in 1993
14 would simply be the machine, but in the ensuing 20
15 years technology has changed, so I had to run a DOS
16 emulation program. Within the DOS emulation
17 program, which would be the system that one would
18 simply have in front of oneself in 1993, I had to
19 unpack; that is to say, run an unzip file program
20 against the ZIP file to generate a set of files
21 within that archive, and then run a second program
22 in that list to generate the final finished program

1 **and the support documentation, including the Kantor**
2 **Reference.**

3 MR. RHOA: Move to strike the portions of
4 that answer relating to dates as nonresponsive.

5 BY MR. RHOA:

6 Q Do you know what the name of the unzip
7 file program that you had to run was?

8 A **I had to run PKUNZIP.**

9 Q Do you know what PKUNZIP stands for?

10 A **It stands for Phil Katz Unzip.**

11 Q Did you have to run PKZIP?

12 A **I did not have to run PKZIP because I was**
13 **not making an archive. I was running PKUNZIP which**
14 **is the program to unzip the file. In some cases**
15 **different groups would use or different**
16 **distributions might use the word PKZIP -- sorry --**
17 **the name PKZIP to be the unzip file. It ranged**
18 **across different systems. But in both cases they**
19 **are the same program.**

20 Q How did you find PKZIP?

21 A **I do not exactly recall which source I**
22 **specifically used to get a copy of the PKUNZIP**

1 program, but I have a large amount of shareware
2 CD-ROM information and older files and I simply
3 grabbed one from the same era from a variety of
4 sources. I'm not sure if it was on this disc or if
5 it was from another one of my sources, but the
6 program is widely available.

7 Q Did you have to run install.bat, b-a-t?

8 MR. GALVIN: Objection to form.

9 A If you mean after unpacking it I had to
10 run a program called install.bat, I recall that I
11 did.

12 Q If you had not run install.bat, would you
13 have been able to access and view Exhibit 1004 from
14 the ZIP?

15 A There's no situation where I would have
16 unpacked that file and not run install.bat, it was a
17 required process.

18 Q Are there any other programs that you were
19 required to run in order to access Exhibit 1004 from
20 the ZIP?

21 A There were no specific programs that I had
22 to run other than the file existing in DOS and

1 having to run a command to show me the contents of
2 the file itself.

3 Q Did you have to run a program called
4 Vernon Buerg's, B-u-e-r-g apostrophe s, LIST program
5 in order to access and view Exhibit 1004 from the
6 ZIP?

7 A I did not.

8 Q Have you ever heard of that program?

9 A Yes, I have.

10 Q Did Exhibit 1004 have a title in the ZIP?
11 Title or name.

12 A You mean -- I'm assuming by "title" you
13 mean FWKCS122.REF, the file name. I would think
14 that is the title, otherwise the title inside of the
15 document on the first page would be my definition as
16 well as the title.

17 Q What does the .ref mean to you?

18 A In MS-DOS of this era, the three dots were
19 called -- the three letters after the dot were
20 called an extension. However, at the time it was
21 used as three additional letters for the name of the
22 file and was not specifically tied to programs. It

1 was the beginning of conventions where .txt might
2 mean a text file and .exe would mean an executable.
3 But the nature of the operating system meant merely
4 that it could be used as three additional
5 indicators. My observation, based on the contents
6 of this being a reference of the program's
7 operation, I would think it was meant to be
8 reference, but it has no inherent meaning in MS-DOS,
9 which is what this was running in.

10 Q Now, were there other files in the ZIP
11 that were .txt files?

12 A Without referencing it, I'd have to say I
13 don't remember.

14 Q Would you have had to have run those
15 additional programs such as PKUNZIP and the other
16 one we discussed in order to access and view a txt
17 file?

18 MR. GALVIN: Objection to form.

19 A You would have to use the PKUNZIP file to
20 unpack the original ZIP. Any text files unpacked
21 from the archive could be read immediately. In this
22 particular case, the running of the installation

1 **would provide additional documents, including this**
2 **reference document.**

3 Q So any txt files could be viewed
4 immediately, right?

5 A **Yes.**

6 Q But Exhibit 1004 was not a txt file,
7 right?

8 A **Correct. However, it functioned exactly**
9 **the same as a text file.**

10 MR. RHOA: Move to strike the portion of
11 that answer starting with "however" as
12 nonresponsive.

13 BY MR. RHOA:

14 Q Exhibit 1004 was a .ref file and not a
15 .txt file, right?

16 A **Correct.**

17 Q Did the ZIP include any .exe files?

18 A **As I recall, it did. Although it may have**
19 **been a dotcom file, which would be the same.**

20 Q You said that running the installing would
21 provide additional documents, including Exhibit
22 1004, right?

1 **A Right.**

2 **Q So does that mean that whenever you unzip**
3 **the ZIP and started installing the exe file, that**
4 **some indicator for other files would pop up**
5 **somewhere?**

6 **A When you ran the install.bat batch file,**
7 **it would proceed to unpack the secondary archive**
8 **inside, including the reference document.**

9 **Q What appeared on your screen that**
10 **indicated this document EMC 1004 during the install?**

11 **A I do not recall the exact text that went**
12 **across the screen. However, as one would do, I**
13 **looked at the directory after the installation was**
14 **finished and found this file was one of the files.**
15 **It was large and not an executable that I could see**
16 **and so looking inside of it I found text.**

17 **MR. RHOA: Move to strike the portion of**
18 **that answer after the word "screen" as**
19 **nonresponsive.**

20 **MR. GALVIN: Just to make it clear on the**
21 **record. I'm not going to put in an argument on**
22 **the nonresponsiveness just for purposes of**

1 facilitating this examination.

2 I just wanted to make clear on the record
3 that I am not consenting or agreeing that these
4 answers are nonresponsive.

5 BY MR. RHOA:

6 Q What kind of computer did you use in this
7 unzipping and install?

8 A I do not recall the exact model name of my
9 computer; however, it was a computer manufactured
10 within the last year that was running Windows 7, and
11 in that Window 7 operating system I was running a
12 program called DOSBox that would emulate a 1990s era
13 home computer.

14 Q Did DOSBox come with that computer?

15 A No.

16 Q Do you have any personal knowledge as to
17 when DOSBox came into being?

18 A DOSBox is a widely available emulator that
19 imitates the functionality of a DOS machine from the
20 1990s. I am not personally aware of its first
21 introduction, but I have certainly been using DOSBox
22 for at least three to five years.

1 Q Do you have any personal knowledge
2 regarding whether DOSBox existed prior to April 11,
3 1995?

4 A DOSBox would not exist before that date
5 because there was no necessity for DOSBox as the
6 machine it emulates was in wide availability.

7 Q And this computer you used for the
8 unzipping and the install came with all the standard
9 stuff a recent computer would come with; is that a
10 fair statement?

11 A An emulator provides a confined
12 environment that emulates often an earlier or
13 contemporary piece of technology, and in doing so
14 creates an environment unconnected to the machine
15 that it is running on. And so the DOSBox program
16 upon being run would be a separate environment
17 within my machine, and so my machine's operating
18 system and contained programs would not be relevant
19 to it. Under a confined circumstance, I could copy
20 over files from my operating system to DOSBox, or
21 from another external source. But depending on when
22 it was written, DOSBox may or may not have been able

1 to run it.

2 Q Was your computer a laptop?

3 A My computer was a desktop.

4 Q Do you know what model?

5 A Unfortunately I don't know the exact
6 model/number or name.

7 Q Do you know what company name's on it?

8 A Again, I've forgotten.

9 Q Do you know how many different versions of
10 FWKCS software were on the disc at Exhibit 1049?

11 A From my observation of the disc, the
12 CD-ROM and the contents that I transferred over from
13 my collection, this version was the only version
14 available. However, if it was under a different
15 name or if it was stored elsewhere on the disc, I
16 might have missed it, but to my knowledge it was the
17 only version on the CD-ROM.

18 Q Was PKUNZIP on the CD-ROM?

19 A Unfortunately I do not recall if it was on
20 the disc or if I acquired it from another
21 contemporary source at the same time. However, it
22 would be widely available at the time that this

1 **program existed.**

2 MR. RHOA: Move to strike that answer
3 after the word "disc" as nonresponsive.

4

5 BY MR. RHOA:

6 Q Was install.bat on that disc?

7 A **Install.bat was on that disc inside of the**
8 **archive of FWKCS122.ZIP.**

9 Q So install.bat was part of the ZIP; is
10 that right?

11 A **Yes.**

12 Q Are there any other programs that you
13 needed to run to access and view Exhibit 1004 that
14 were part of the ZIP?

15 A **Other than running the install.bat file**
16 **to -- that would extract the contents of the second**
17 **archive that would include the reference, there were**
18 **no other specific programs. The MS-DOS operating**
19 **system itself allows you to view the contents of a**
20 **text file, and so I was able to use that internal**
21 **program to view it.**

22 Q Is it fair to say that you could not

1 access and view Exhibit 1004 unless you installed
2 the software from the disk on your machine?

3 MR. GALVIN: Objection to form.

4 A It is not fair to say that.

5 Q Why not?

6 A It would be possible to -- it is possible
7 to view the file without installing its contents to
8 the disc, although it would be a strange and
9 involved process, but you could certainly look at
10 the contents from the secondary archive.

11 Q Can you explain that process in detail?

12 A The secondary archive is a second
13 compressed collection of files and so it would be
14 possible to run a decompression utility against the
15 secondary archive to see its contents and look at
16 them.

17 A particularly paranoid and concerned
18 system administrator or owner might do this to
19 verify that the internal archive was what it claimed
20 it was. In this era, there are not as many virus
21 programs or encapsulation of programs to prevent
22 damage. So an administrator might look at this to

1 verify that the install.bat file was everything it
2 claimed it was, along with the internal contents of
3 the archive.

4 Q So the reason to do this would be to make
5 sure that this was not a virus?

6 A To make sure that it was not a virus or to
7 make sure that it was a functioning archive or to
8 make sure that -- or to find out what contents it
9 had out of curiosity or to understand what this
10 program's function was.

11 Q Would a normal person in the ordinary
12 course have done this?

13 MR. GALVIN: Objection to form.

14 A In 1993, it would not be out of the realm
15 of possibility for a person who was looking through
16 a shareware CD and finding a utility to examine it
17 more closely before installing it or running of any
18 of its internal executables to understand its
19 functionality.

20 Q What decompression utility would you use?

21 A Making clear that I did not do this
22 myself. I would run. I would look at the header,

1 that is to say the first few bytes of this file, to
2 find out what form it was compressed in and would
3 run whichever appropriate utility was used. The
4 reference document gives heavy thanks to Phil Katz
5 ZIP program and doesn't mention another unpacking
6 program. So I would look at it by viewing its
7 contents via a PKZIP program. And if it didn't
8 work, make a decision whether or not I wanted to run
9 the installation program.

10 Q Was Exhibit 1004 on this disc at Exhibit
11 1049 a standalone document?

12 A No, it was not.

13 Q It was in the ZIP, though, right?

14 A It was a part of the ZIP package that
15 constituted the whole of the program on a disc with
16 multiple other archives and support programs related
17 to the CD-ROM itself.

18 Q In your declaration, can you refer to
19 page 7?

20 A (Complies.) I have 7 in front of me.

21 Q In Footnote 3 there's a date of September
22 16, 2011. Do you see that?

1 **A Yes.**

2 **Q Does that mean that the software archive**
3 **archived this on September 16, 2011?**

4 **A As part of joining the Internet Archive, I**
5 **consolidated or duplicated my own previous archiving**
6 **methods and transferred a copy of my original**
7 **archiving of the CD-ROM to servers owned by my new**
8 **employer, the Internet Archive, on September 16,**
9 **2011, as a means of providing multiple accessible**
10 **copies of this information. The Internet Archives'**
11 **servers are better connected and better maintained**
12 **than my personal servers, and personal sites, and so**
13 **I made sure to duplicate as much of my efforts on**
14 **their servers as well.**

15 **Q Do you recall ever using the invention**
16 **Factory BBS prior to April 11, 1995?**

17 **A I have never used the invention Factory**
18 **BBS or connected to it.**

19 **MR. RHOA: Take a break.**

20 **THE WITNESS: Sure.**

21 **MR. RHOA: How long do you want?**

22 **THE WITNESS: I have no need for a break**

1 so whatever you'd like.

2 MR. RHOA: Ten.

3 (Whereupon, off the record.)

4 (Whereupon, resumed.)

5 BY MR. RHOA:

6 Q In your declaration, could you please go
7 to Paragraph 15 and let me know when you're there.

8 A **Yes.**

9 Q Bridging lines 2 and 3 of Paragraph 15 you
10 refer to an installer program. Do you see that?

11 A **Yes.**

12 Q What program was that?

13 A **Install.bat.**

14 Q And then were the instructions for
15 installation separate from that program or part of
16 it?

17 A **They were separate.**

18 Q When was the first time you saw
19 FWKCS122.ZIP?

20 A **The process of copying the contents of the**
21 **CD-ROM to my server took place in 2009 during which**
22 **I would have copied all of the files. I do not have**

1 a specific memory of watching that file go by the
2 list of files going by, but I would have seen it in
3 some passing fashion. The specific time that I
4 studied FWKCS122.ZIP was during the process I
5 previously described across the Skype conversation
6 with the lawyers within the past two months where I
7 copied this ZIP file over from my collection, my
8 private collection, or -- sorry, not private -- my
9 personal Web site and collection into the DOSBox
10 program to look at it. So in one sense it was 2009,
11 but in the sense of treating it as an individual
12 object that was 2013.

13 MR. RHOA: No further questions at this
14 time, subject to reserving the right to recross
15 or depose the witness at some other point in
16 time should the declaration change or should
17 some other need so arise.

18 MR. GALVIN: I have a few brief questions.

19 THE WITNESS: Certainly.

20 EXAMINATION BY

21 MR. GALVIN:

22 Q Mr. Sadofsky, in 1993 was PKUNZIP

1 available to the public?

2 MR. RHOA: Objection, form.

3 A PKZIP and PKUNZIP were the de facto
4 standard for compressing and uncompressing files on
5 home computers of MS-DOS, running MS-DOS and running
6 early versions of Windows. I would consider it to
7 be an almost vital utility to interact with any
8 program archives or CD-ROMs containing programs.

9 Q What operating system were the files on
10 contained in FWKCS122.ZIP designed to run on?

11 A They were designed to run in MS-DOS, and
12 compatible DOSs.

13 Q And was MS-DOS widely available in the
14 1993-1994 timeframe?

15 A MS-DOS was very widely available on the by
16 1993 dominating operating system -- dominating
17 computers -- I'm sorry, sorry -- dominating
18 computers of that time. The Microsoft and
19 Intel-based computers were quickly taking market
20 share with a number of minor and reducing other
21 operating systems in effect, including Apple and
22 Apple Macintosh and Amiga computers.

1 Q How hard would it have been to install and
2 access FWKCS.REF, the Kantor Reference, on a
3 1993-1994 era PC using the CD-ROM from your
4 collection?

5 MR. RHOA: Objection, lacks foundation.
6 Calls for improper opinion.

7 A **The shareware CD was a standard method of**
8 **file transfer and transport because of the relative**
9 **slowness of modems and Internet connections, and the**
10 **process of a CD-ROM's files being moved or executed**
11 **or unpacked would be, in my opinion, a standard**
12 **process associated with the operation of a computer.**

13 Q In one of your answers to counsel's
14 questions you referred to support programs on the
15 CD-ROM, the Walnut Creek CD-ROM, Exhibit 1049. Do
16 you recall mentioning that?

17 A **Yes.**

18 Q And what support programs on the CD-ROM
19 are you referring to?

20 A **A shareware CD-ROM, especially one**
21 **manufactured by a company such as Walnut Creek,**
22 **would want to make it as easy as possible to**

1 understand the contents of the CD-ROM. And instead
2 of just a large collection of files, they would have
3 a written index and short descriptions of files
4 along with programs enabling you to browse that
5 collection of descriptions and find the files on the
6 CD-ROM.

7 Q And how would these -- this browser
8 program work?

9 A One moment to find the exact name.

10 MR. RHOA: Objection, lacks foundation.

11 A Within the insert, the paper insert of the
12 shareware CD-ROM, there is a header called Important
13 Files & Directories.

14 Q And just to interrupt you. This is the
15 third page of Exhibit 1049?

16 A The third page of Exhibit 1049. There is
17 a section called Important Files & Directories,
18 including short descriptions of what these important
19 files are. And the first one is go.bat, which says,
20 Run this program to start. Upon running of that,
21 you can browse through the file known as index.txt,
22 which is a list of all the files on the archive, in

1 the archive, the shareware CD, along with their
2 descriptions, and allow you to browse through.

3 Q There's a reference here under Important
4 Files & Directories to something called unzip.exe.
5 Do you see that?

6 A I do.

7 Q What does that refer to?

8 A That refers to an unzipping; that is to
9 say, unpacking or opening of ZIP archives on the
10 disc so that you can easily unzip the contents or --
11 there's a strong urge to use the word itself in its
12 own definition. But the process is basically taking
13 the contents of an archive, an archive file and
14 making, you know, allowing you to unpack them onto
15 your disc.

16 Q And could a person -- well, let me
17 withdraw that.

18 Can the unzip.exe file be used to unzip
19 FWKCS122.ZIP file that is found on the CD-ROM?

20 A Yes.

21 Q Could you turn to page 4 of Exhibit 1049.

22 A I have it in front of me.

1 Q Could you read the last sentence on the
2 bottom paragraph?

3 A **This disc is thoroughly indexed and**
4 **includes an easy to use file browser so it is simple**
5 **to locate files by name or subject.**

6 Q And is that consistent with your
7 recollection about how Walnut Creek CD-ROMs were
8 formatted and provided in this timeframe?

9 A **Yes. Simtel made a variety of similar**
10 **products and were the leader in shareware CD-ROMs at**
11 **this time, and this would be one of the hallmarks of**
12 **their system, of their products.**

13 Q If you'd turn to Exhibit 1004, the Kantor
14 Reference.

15 A **Okay.**

16 Q I believe you were asked a question, some
17 questions about your personal knowledge regarding
18 EMC 1004 by counsel. Do you recall that?

19 A **I do recall that.**

20 Q And do you recall there was a question
21 where counsel moved to strike your answer about what
22 you knew about 1004? Do you generally recall that?

1 A I generally recall that.

2 Q So let me give you an opportunity.

3 What actual knowledge do you have about
4 the content of EMC 1004 and its source?

5 MR. RHOA: Objection to form.

6 A Shareware CD-ROMs were manufactured
7 en masse throughout the 1990s as a means of easy
8 transport of files and other content from Bulletin
9 Board Systems and Internet sites. As a result of
10 its large size and the relative small size of the
11 individual files, they quickly ran out of easy files
12 to copy and started moving to a wider and wider
13 range of Bulletin Board Systems and Internet sites
14 to provide new products in a timely fashion. In the
15 case of Walnut Creek's Simtel and other related
16 archives, they would first use large collections of
17 files on the Internet, and later in, I believe it's
18 1993 in the case of Simtel and in others, provide a
19 mirror on their own servers for people to widely
20 grab. And in that way invite people to contribute
21 files as a standard way of distributing besides
22 putting them on individual bulletin boards and

1 Internet sites.

2 They would then manufacture professionally
3 these CD-ROMs, these shareware CD-ROMs that they
4 would then sell in stores or through the mail to the
5 general public, including Bulletin Board System
6 operators and end users and businesses as an easy
7 transport. This persisted certainly into the early
8 2000s as one of the standard methods of
9 distribution. Among these were the Simtel series,
10 which were a series of shareware CD-ROMs with date
11 stamps indicating when the snapshot or complex was
12 generated. In this case October 1993 of a prominent
13 archive called the Simtel archive, which originally
14 ran on a military computer that was hosted as a file
15 sharing site, primarily for MS-DOS related programs.

16 In the case of Simtel, Walnut Creek
17 started providing at first a mirror and then the
18 primary source for these files at ftp.cdrom.com and
19 encouraged people to download it. Their own
20 marketing material declares that they were the
21 largest and most visited site of its kind for
22 multiple years, along with heights of up to two

1 terabytes a day in transfer.

2 The Simtel CD-ROM that's in my possession,
3 manufactured by Walnut Creek, was acquired in 2009
4 via eBay as part of a larger set of lots of vintage
5 CD-ROMs that I purchased to make duplicates of and
6 provide on the Internet as Walnut Creek itself had
7 shut down the cdrom.com site in the early 2000s and
8 had been purchased by another firm as a means of
9 providing historical reference and cultural and
10 knowledge information to the general public. As a
11 person with a large collection of these CD-ROMs, now
12 numbering in the thousands, I have observed many of
13 these commercial CD-ROMs and believed this to be a
14 standard manufactured professional CD-ROM with
15 markings indicating that it is from 1993.

16 To make these files available, I
17 duplicated the contents of the CD-ROM directly onto
18 a web server run by myself in which I am the only
19 administrator or individual with access. From my
20 site, a number of mirrors are automatically provided
21 in other locations around the world.

22 In 2011 I was hired by the Internet

1 Archive, a prominent collection of vintage and
2 historical online and computer information. And as
3 part of that process I transferred copies of my Web
4 sites that were historical archives to the
5 archive.org collection and servers. Mostly to allow
6 the superior Internet connection and computer
7 hosting of archive.org become the primary location
8 to find these files.

9 I continue to maintain my own copy and
10 encourage people who wish to have larger collections
11 utilize the archive.org servers to enable them to
12 reach it easily.

13 As an administrator at archive.org, I have
14 provided the copies myself and am the sole person in
15 charge of putting them online.

16 Q Turning then --

17 MR. RHOA: Move to strike portions of that
18 answer that were nonresponsive.

19 Q Turning to Exhibit -- based on that
20 answer, is it your understanding that Exhibit 1004,
21 the Kantor Reference, is a true and accurate copy of
22 the contents of the file on the Walnut Creek CD-ROM

1 depicted in Exhibit 1049?

2 MR. RHOA: Objection, leading.

3 A I believe very strongly that this file as
4 is printed in front of me is a duplicate of the
5 information contained on the CD-ROM that was
6 manufactured in 1993, sans being printed and an
7 exhibit information being added to it on the front
8 page, along with my signing it on the back, but it
9 is materially the same information.

10 Q When you said "signing on the back," were
11 you referring to your declaration?

12 A My apologies. This particular document.
13 I signed multiple documents. I was under the
14 impression this had my signature at the end, but I
15 will say that it is the same document. I would sign
16 it if asked and attest to that.

17 Q When you were talking about signing, you
18 were referring to your declaration, not Exhibit
19 1004?

20 A Exactly.

21 MR. GALVIN: Thank you for your time, sir.

22 No further questions.

1 MR. RHOA: I have a few questions.

2 FURTHER EXAMINATION BY

3 MR. RHOA:

4 Q Please refer to Exhibit 1049, page 3.

5 **A I have that in front of me.**

6 Q Do you see where it says index, index.txt,
7 and then it says, A list of all the files in the
8 archive? Do you see that?

9 **A Yes.**

10 Q Was this .ref file reflected in Exhibit
11 1004 identified in this index.txt?

12 **A It would not be.**

13 MR. RHOA: No further questions.

14 (Whereupon, witness to read and sign.)

15 (Whereupon, off the record.)

16 (Whereupon, deposition adjourned 11:06

17 a.m.)

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June 28, 2013

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SIGNATURE OF WITNESS

7

8 Subscribed and sworn to and before me

9 this _____ day of _____, 20____.

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Notary Public

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1 C E R T I F I C A T E

2

3 I, JOSEPHINE H. FASSETT, a Registered
4 Professional Reporter, Certified Court Reporter, and
do hereby certify that the witness, JASON SCOTT
5 SADOFSKY, whose deposition is hereinbefore set
forth, was first duly sworn by me at the law offices
6 of WilmerHale, 7 World Trade Center, 250 Greenwich
Street, New York, New York, on Friday, June 28,
7 2013, and that the foregoing deposition is a true
and accurate record of the testimony given by such
8 witness, on that day, between the hours of 9:03 a.m.
and 11:06 a.m.

9 I further certify that the cross-examination
deposition of Jason Scott Sadofsky, taken on behalf of
10 Patent Owner and counsel for Petitioner was present.

11 I further certify that I am not related to
any of the parties to this action by blood or
marriage, nor do I have any disqualifying interest,
12 personal or financial in the action within.

13 IN WITNESS WHEREOF, I have hereunto set my
hand this 3rd day of July, 2013.

14

15

16

17 _____
JOSEPHINE H. FASSETT, CCR, RPR

18 CCR License No. 30XI00098400

19 License No. 32148

20 New York Notary Public

21

22

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